

**COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

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The Minutes

February 24, 2003

**C041313 PUBLIC ADMINISTRATOR OF THE COUNTY OF NEVADA v. PARDO
(Not for Publication)**

The probate court's order awarding the Public Administrator and the County Counsel compensation earned in connection with administering Eagles's estate is affirmed. The parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 27 (a).)

SCOTLAND, P.J.

We concur: Raye, J.
 Robie, J.

C041326 MACTAGONE et al. v. SCHINDLER et al. (Not for Publication)

The order denying Schindler's SLAPP motion is reversed with directions to the trial court to grant the motion. Mactagone shall pay Schindler's costs of this appeal. (Cal. Rules of Court, rule 27 (a).)

MORRISON, J.

We concur: Sims, Acting P.J.
 Nicholson, J.

**C041735 In re JESUS V.; THE PEOPLE v. JESUS V.
(Not for Publication)**

The juvenile court's order for restitution entered June 28, 2002, is affirmed.

NICHOLSON, J.

We concur: Davis, Acting P.J.
 Hull, J.

**C038248 THE PEOPLE v. WOMACK
BY THE COURT:**

Appellant's petition for rehearing is denied.
NICHOLSON, Acting P.J.

**C039413 THE PEOPLE v. WILLIAMS
BY THE COURT:**

Respondent's petition for rehearing is denied.
SIMS, Acting P.J.

**C038386 MARTIN v. ALEXANDER et al.
BY THE COURT:**

Appellant's petition for rehearing is denied.
SIMS, Acting P.J.

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At 9:55 a.m., the court recessed. At 10:00 a.m., the court reconvened with Sims, Associate Justice; Morrison, Associate Justice; and Callahan, Associate Justice.

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February 25, 2003, continued

C041492 In re LIONEL FARLEY on Habeas Corpus

Cause called. Constance L. Picciano, Supervising Deputy Attorney General, argued for respondent. S. Lynne Klein, court appointed counsel, argued for petitioner. Submission deferred. Respondent is given 30 days to file supplemental letter brief and petitioner has 30 days to respond.

At 10:11 a.m., the court recessed. At 10:14 a.m., the court reconvened with Davis, Associate Justice; Raye, Associate Justice; and Callahan, Associate Justice.

C035582 THE PEOPLE v. HALL, et al.

Cause called. Eileen S. Kotler, court appointed counsel, argued for appellant. Paul E. O'Connor, Deputy Attorney General, argued for respondent. Lydia Hall, In Pro Per appellant, appeared only. Cause submitted.

At 10:52, a.m., the court recessed until 9:30 a.m., Monday March 17, 2003.

C036850 THE PEOPLE v. ABBASZADEH (Certified for Partial Publication)

The judgment (order granting probation) is reversed and the cause is remanded with directions to the trial court to reassign this case to a new judge. (Code Civ. Prod., § 170.1, subd. (c).) The clerk is directed to forward a copy of this opinion to the Commission on Judicial Performance for whatever action that body deems to be appropriate in the circumstances.

MORRISON, J.

I concur: Nicholson, J.

I concur in part II of the majority opinion, where the majority concludes that various of defendant's contentions of prejudicial error are not meritorious.

I also concur in the majority's conclusion that voir dire was improper and in the majority's decision to report Judge O'Flaherty's conduct to the Commission on Judicial Performance.

However, I respectfully dissent from the reversal of the judgment...

For the foregoing reasons, I would affirm the judgment.

SIMS, Acting P.J.

C037430 THE PEOPLE v. SULLIVAN (Not for Publication)

The judgment is affirmed.

DAVIS, J.

We concur: Scotland, P.J.

Kolkey, J.

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February 26, 2003, continued

- C039991 THE PEOPLE v. NAYLOR (Not for Publication)**
The order committing the defendant to a secure facility for an additional two-year term is affirmed.
DAVIS, J.
We concur: Blease, Acting P.J.
 Callahan, J.
- C040090 THE PEOPLE v. BROUSSARD (Not for Publication)**
The judgment is affirmed.
DAVIS, J.
We concur: Scotland, P.J.
 Kolkey, J.
- C040151 THE PEOPLE v. MYERS (Not for Publication)**
The judgment is reversed and the matter remanded to the trial court for a new trial consistent with this opinion. Provided that Kelly Henning is still unavailable to testify, the trial court is directed to admit evidence of her out-of-court statement to police that the blue bag was hers.
ROBIE, J.
We concur: Blease, Acting P.J.
 Callahan, J.
- C040800 THE PEOPLE v. TUCKER (Not for Publication)**
The orders of the trial court are affirmed.
ROBIE, J.
We concur: Scotland, P.J.
 Callahan, J.
- C041200 THE PEOPLE v. GONSALVES (Not for Publication)**
The judgment is affirmed.
ROBIE, J.
We concur: Scotland, P.J.
 Callahan, J.
- C040586 EMPLOYER'S INSURANCE OF WAUSAU v. LISA MOTOR LINES, INC., et al. (Not for Publication)**
The judgment is affirmed.
SCOTLAND, P.J.
I concur: Hull, J.
I concur in parts II and III of the majority opinion and in the result in part I...
 Sims, J.

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C040808 GATLIN v. DEPARTMENT OF MOTOR VEHICLES

(Not for Publication)

The judgment is reversed. The matter is remanded to the trial court with directions to deny the petition for writ of mandate. The parties shall bear their own costs on appeal.

SCOTLAND, P.J.

We concur: Raye, J.

Morrison, J.

C037297 THE PEOPLE v. OMAR R.

BY THE COURT:

Appellant's petition for rehearing is denied.

SCOTLAND, P.J.

C039293 THE PEOPLE v. FITZGERALD

(Not for Publication)

THE COURT:

It is ordered that the opinion filed herein on February 19, 2003, be modified as follows:...

There is no change in the judgment.

BY THE COURT:

RAYE, Acting P.J.

HULL, J.

KOLKEY, J.

February 27, 2003

C035643 THE PEOPLE v. BELL

(Not for Publication)

C035677 THE PEOPLE v. LEMAIRE

(Not for Publication)

The judgment as to each defendant is affirmed.

MORRISON, J.

We concur: Sims, Acting P.J.

Nicholson, J.

C038728 THE PEOPLE v. SEYMOUR

(Not for Publication)

The judgment is modified... As modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment in accordance with this disposition and deliver a certified copy to the Department of Corrections.

HULL, J.

We concur: Blease, Acting P.J.

Morrison, J.

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- C038847 THE PEOPLE v. HERTS (Not for Publication)**
The six-year weight enhancement imposed pursuant to Health and Safety Code section 11370.4, subdivision (a) on count III is stricken. The sentence imposed on count III is ordered stayed pending successful completion of the sentence imposed on count II. The superior court is directed to prepare an amended abstract of judgment reflecting these modifications. In all other respects, the judgment is affirmed.
DAVIS, Acting P.J.
We concur: Morrison, J.
Kolkey, J.
- C039039 THE PEOPLE v. ROCHESTER (Not for Publication)**
The judgment is affirmed.
HULL, J.
We concur: Scotland, P.J.
Nicholson, J.
- C039650 THE PEOPLE v. ALLEGHENY CASUALTY COMPANY (Not for Publication)**
The judgment is affirmed.
HULL, J.
We concur: Sims, Acting P.J.
Nicholson, J.
- C039896 STEVENS v. CALIFORNIA DEPARTMENT OF CORRECTIONS (Not for Publication)**
The judgment is affirmed. The Department shall recover its costs on appeal. (Cal. Rules of Court, rule 27 (a).)
KOLKEY, J.
We concur: Sims, Acting P.J.
Nicholson, J.
- C040841 SILVA v. STOCKTON FURTHER PROCESSING, INC. et al. (Not for Publication)**
As to defendant and appellant Costa, the order awarding attorney's fees and costs is reversed. As to defendant and appellant Stockton Further Processing, Inc., the order awarding attorney's fees and costs is reversed and the matter is remanded to the trial court for further proceedings consistent with this opinion. Defendants and appellants Costa and Stockton Further Processing, Inc. shall recover their costs on appeal from plaintiff Silva.
SIMS, Acting P.J.
We concur: Nicholson, J.
Kolkey, J.

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C041042 REED v. LAWS, M.D. (Not for Publication)
The judgment is affirmed. Defendant shall recover his costs on appeal.
(Cal. Rules of Court, rule 27 (a).)
KOLKEY, J.
We concur: Sims, Acting P.J.
Nicholson, J.

C040098 In re J.C. et al.; SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES v. ROBERT C. (Not for Publication)
The juvenile court's orders are affirmed.
HULL, J.
We concur: Blease, Acting P.J.
Nicholson, J.

February 28, 2003

C038802 THE PEOPLE v. CARMONY (Not for Publication)
The judgment is reversed and the matter is remanded to the trial court for resentencing in accordance with this opinion.
BLEASE, Acting P.J.
I concur: Nicholson, J.
I respectfully dissent...
Unless we are prepared to say that a knowing violation of the registration requirements is not sufficient to trigger the Three Strikes law -- a policy determination that is outside our province as courts -- we must affirm the trial court's adherence to the provisions of the Three Strikes law.
Kolkey, J.

C039548 THE PEOPLE v. ROSE, JR. (Not for Publication)
The judgment and order of commitment are affirmed.
BLEASE, Acting P.J.
We concur: Sims, J.
Morrison, J.

C040707 THE PEOPLE v. KNOX (Not for Publication)
The judgment is affirmed.
SCOTLAND, P.J.
We concur: Callahan, J.
Robie, J.

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C040854 THE PEOPLE v. DICKERSON (Not for Publication)

The judgment is modified... As modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment reflecting the imposition of the penalty assessments, the order to pay victim restitution in an amount to be subsequently determined, and the specification that defendant shall be included in the state's DNA and Forensic Identification Data Base and Data Bank program. A certified copy of the amended abstract shall be forwarded to the Department of Corrections.

KOLKEY, J.

We concur: Sims, Acting P.J.
 Raye, J.

C035589 McCLELLAN v. McCLELLAN (Not for Publication)

The order of March 21, 2000 is reversed to the extent that child support was calculated without a deduction for health insurance premiums paid by Gregory. We remand the matter to the trial court to recalculate the child support for the relevant period, taking this deduction into account. On remand, the trial court should also specify the effective date of the order, which was left blank. In the interests of justice, each party shall bear his or her own costs on appeal. (Cal. Rules of Court, rule 27 (a) (4).)

KOLKEY, J.

We concur: Nicholson, Acting P.J.
 Raye, J.

C037651 GLANDER, et al. v. MARSHALL HOSPITAL (Not for Publication)

The judgment is affirmed.

DAVIS, J.

We concur: Blease, Acting P.J.
 Callahan, J.

C040827 HYLTON v. KELLEY and BARBERA and KELLEY, JR., etc., et al. (Not for Publication)

The judgment is reversed. Appellants shall recover costs on appeal.

BLEASE, J.

We concur: Scotland, P.J.
 Morrison, J.

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- C041852 AZARABADI v. KATSUDA et al. (Not for Publication)**
The judgment is affirmed. The Katsudas are awarded their costs on appeal. (Cal. Rules of Court, rule 27 (a) (1).)
BLEASE, J.
We concur: Scotland, P.J.
 Morrison, J.
- C040159 In re CHEYENNE C.; DEPARTMENT OF HEALTH AND HUMAN SERVICES v. FRANCILLE C. and CHEYENNE C. (Not for Publication)**
The order granting sibling visitation is vacated. The matter is remanded with directions to the juvenile court to permit the minor's attorney to examine witnesses.
NICHOLSON, J.
We concur: Blease, Acting P.J.
 Hull, J.
- C040193 In re ISIDRO B.; DEPARTMENT OF HEALTH AND HUMAN SERVICES v. ISIDRO R. (Not for Publication)**
The orders are affirmed.
NICHOLSON, J.
We concur: Sims, Acting P.J.
 Kolkey, J.
- C041167 In re BRANDEN E. et al.; BUTTE COUNTY CHILDREN'S SERVICES DIVISION v. MILES E. (Not for Publication)**
The dispositional order is reversed, and the matter is remanded for the limited purpose of determining whether CSD complied with the notice provisions of ICWA and whether ICWA applies in this case. If, after proper inquiry, the juvenile court determines that the tribe or BIA was properly noticed and there either was no response or the tribe or BIA determined that the minors are not Indian children, the order shall be reinstated. If notice was not given, the juvenile court shall order CSD to comply promptly with the notice provisions of ICWA. Thereafter, if there is no response or if the tribe or BIA determines the minors are not Indian children, the order shall be reinstated. However, if the tribe or BIA determines the minors are Indian children, or if information is presented to the court that affirmatively indicates the minors are Indian children as defined by ICWA and the court determines ICWA applies to this case, the juvenile court shall conduct a new disposition hearing in conformance with all provisions of ICWA.
SCOTLAND, P.J.
We concur: Callahan, J.
 Robie, J.

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- C041478 In re ERIC G. et al.; DEPARTMENT OF HEALTH AND HUMAN SERVICES v. YOLANDA S. (Not for Publication)**
The judgment (order) is affirmed.
NICHOLSON, J.
We concur: Sims, Acting P.J.
 Hull, J.
- C042067 In re ARIANNA V. et al.; DEPARTMENT OF SOCIAL SERVICES v. KRISTIE J. (Not for Publication)**
The orders of the juvenile court terminating the parental rights of appellant are reversed, and the matter is remanded to the juvenile court with directions to order DSS to provide each of the three Cherokee tribes with proper notice of the proceedings under the Act. If, after receiving notice under the Act, no tribe indicates the minors are Indian children within the meaning of the Act, then the juvenile court shall reinstate the order terminating parental rights without conducting a new evidentiary hearing pursuant to section 366.26.
In all other respects, the orders are affirmed.
NICHOLSON, J.
We concur: Davis, Acting P.J.
 Hull, J.
- C041367 BLACKMUN et al. v. THE SUPERIOR COURT OF SAN JOAQUIN COUNTY and BANK OF STOCKTON et al.**
The petition is denied. The alternative writ is discharged, and this court's stay order is vacated upon finality of this decision. However, the trial of this action shall be stayed pending entry of judgment in the Guaranty Action referred to in the opinion. Petitioners shall pay the costs of real parties in interest in this petition.
SIMS, Acting P.J.
We concur: Nicholson, J.
 Morrison, J.
- C041638 THE PEOPLE v. HENDERSON**
BY THE COURT:
Appellant's petition for rehearing is denied.
BLEASE, Acting P.J.
- C038514 ANANDA CHURCH OF SELF-REALIZATION v. AMERICAN INTERNATIONAL SURPLUS LINE INSURANCE COMPANY**
BY THE COURT:
Appellant's petition for rehearing is denied.
SCOTLAND, P.J.

February 28, 2003, continued

Appellant's petition for rehearing is denied.
SCOTLAND, P.J.

BLEASE, Acting P.J.
RAYE, J.
KOLKEY, J.

We concur: Nicholson, J.
 Kolkey, J.